IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 2670 of 2006()

C.C.NO.494/2004 OF JUDICIAL MAGISTRATE OF THE FIRST CLASS COURT, ALATHUR

PETITIONER: ACCUSED.

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1. ROY VARGHESE, S/O. T.T.VARGHESE,
   THACHAMPERIL VEETTIL, KANACKANTHURUTHI,
   VADAKKANCHERRI, ALATHUR.

2. MARIYAMMA,
   THACHANPERIL HOUSE, CHAKKUNDU.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: RESPONDENTS/STATE.

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1. JISA P.JOSE, D/O. JOSE,
   PADVIL VEETTIL, CHITTADI, VANDAZHI, ALATHUR.

2. S.I. OF POLICE,
   VADAKKANCHERRY, PALAKKAD DISTRICT.

BY FOR R1, ADV. SRI.V.CHITAMBARESH
PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

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Crl.M.C. No. 2670 of 2006 (C)

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Dated this the 12th day of March, 2007

O R D E R

The 1st petitioner is the husband of the de facto complainant-1st respondent-Jisa P.Jose-and the 2nd petitioner is the mother of the 1st petitioner. This petition is preferred under Section 482 of the Code of Criminal Procedure, praying to quash Annexure-I, First Information Report, in Crime No.182/2004 of Vadakkencherry Police Station and consequently all further proceedings in C.C.No.494/2004.

2. The 1st petitioner, Roy Varghese, and the 1st respondent, Jisa P.Jose, married as per the Christian rights, on 23/06/2003. They could not live for long. Because of the difference of opinion, they fell apart. Conciliations failed. Therefore, she was residing separately.

3. On the plea that the husband is not maintaining the wife, the latter preferred an application for maintenance, M.C No.26/2004, before Judicial Magistrate of the First Class, Alathur. On appreciating the evidence of the wife-PW.1, and the

husband CWP.1, learned Magistrate awarded maintenance, at the rate of Rs.1750/- per month, to the wife. Therefore, the 1st petitioner preferred R.P(F.C) No.172/2005 for setting aside the maintenance award. The payment of the maintenance was allowed from the date of the order of the court below. Praying that the date of effective payment of the maintenance may be directed to be made from the date of the petition itself, the wife came up before this Court, through R.P(F.C) No.12/2006, for modification of the order as prayed for.

4. While both the matters were heard together as the parties were very young, an attempt was made to unite them through conciliation and counseling. As both the parties stuck to the respective hard stands, which did not enable for a reunion, the parties were directed to work out their own remedies for further conciliation so that the amount alleged to have been received by the petitioners, during the marriage, could be paid back and the claim settled between the parties. Although, originally, the petitioners took the stand that they did not receive any money, after negotiations, both the sides agreed for an amount of Rs.4,00,000/-. Accordingly, the same was paid by

the 1st petitioner-Roy Varghese to Jisa P.Jose, through a demand draft. The bills for purchases of the gold ornaments and the dresses belonging to Jisa P.Jose, were also handed over on the mediation of the counsel on either sides, as well as one Adv.Mohanakrishnan, who was representing Roy Varghese before the court below.

5. When the parties appeared before me, in my chamber, as well as in the Court, it was further agreed by them that the parties would file a joint petition for divorce on mutual consent before the court below. It is now submitted that the parties have accordingly filed a petition and they have been divorced. Roy Varghese is already married with another woman.

6. During the hearing and conciliation, when the entire matters were settled between the parties, it was also further agreed by Jisa P.Jose as well as her father that the criminal case pending on the file of Judicial Magistrate of the First Class, Alathur, shall be withdrawn. However, as an offence under Section 498A of the Indian Penal Code is non compoundable, this Court as per the order dated 20/02/2006, disposed of the matter, directing that the criminal case “shall be

disposed of according to law, taking into consideration the above arrangements".

7. Later on, it was reported that, though, all the arrangements as per the order of this Court dated 20/02/2006, took place and parties have got mutually divorced and separated themselves and, the payment was also affected as directed but Jisa P.Jose did not appear before the Magistrate court and withdraw the case. Instead, she also lead prosecution evidence against the petitioners.

8. I have, therefore, posted the matter again before this Court. Curious enough, the 1st respondent Jisa P.Jose, as well as her father had stated that they would dispose of the criminal case 'according to law'. I have noticed that the advocate who appeared for Jisa P.Jose, during the conciliation and negotiation, had relinquished his vakalath and another Adv.V.Chitambaresh appeared before me. For a further hearing, including the maintainability of the prayer for quashing C.C.No.494/2004 on the file of Judicial Magistrate of the First Class, Alathur, the matter was posted on 09/11/2006.

9. A Crl.M.C has been filed by Roy Varghese praying to quash the criminal proceedings pending against him before the Magistrate court. But I declined to exercise jurisdiction under Section 482 of the Code of Criminal Procedure, as the matter before me was, as agreed by both the parties and as stated in the order dated 20/02/2006.

10. When the matter came up for consideration on 09/11/2006, it was submitted by the counsel appearing for Roy Varghese that Crl.M.C.No.2670/2006, filed for quashing the proceedings, under Section 482 Cr.P.C., was pending before another learned Single Judge. In the above circumstances, I have ordered to place the entire file before the Hon'ble the Chief Justice for considering the R.P(F.C) matters, the order dated 20/02/2006 of this Court and Crl.M.C.No.2670/2006 pending before another learned Single Judge. The Hon'ble the Chief Justice had send the entire matters to this Court for disposal, according to the law.

11. I have therefore, heard the counsel on either side.

12. In Annexure-I, F.I.R in Crime No.182/2004 of Vadakkencherry Police Station, Palakkad, the offence alleged against the petitioners are under Section 498A Indian Penal Code read with Section 34 of the I.P.C. It is alleged in the F.I.R that during her matrimonial life in the house of the petitioners, they were behaving cruelly towards her and also demanded further properties from her. It is further alleged that he has attempted to cause danger to her life while he was travelling with him in the motor bike.

13. The materials made available before this Court contained no specific instance or instances, which would attract the explanation contained under Section 498A I.P.C to the word “cruelty”. There was no attempt on the part of the petitioners to drive Jisa P.Jose to commit suicide. Because of the action of the petitioners, no grave injury or injuries had been caused to Jisa P.Jose. No danger to her life, limb, or to her health, either mental or physical, had also been caused. There is also no evidence or material to show that she had been harassed with a view to force her or anyone related to her to bring in any property or any gold or money, by the petitioners. There is also

no specific allegations made against the petitioners, even in the First Information Statement.

14. When I have had negotiations with the parties, both Jisa P.Jose as well as her father, agreed not to press the case pending before the Magistrate court. However, the change of attitude came only after the divorce was affected, the money paid, the articles and other items received from the petitioners by Jisa P.Jose. That was the reason why the counsel, who was appearing for Jisa P.Jose, before this Court, had not appeared thereafter. Probably, without disclosing the true facts, the present counsel may have been forced to proceed with the matter.

15. In the counter affidavit, filed by Jisa P.Jose, dated 10/03/2007, it is stated that the monetary claim alone was settled and the criminal case was to be disposed of according to the law. As stated above, Section 498A I.P.C being a non compoundable matter and believing that Jisa P.Jose would comply with the directions of this Court, the demand draft of Rs.4,00,000/- was handed over to her and the articles were also

returned. It was after receiving everything that, there was a volte-face on her part.

16. After appreciating the whole facts, including the ingredients under Section 498A I.P.C., I find that an offence under Section 498A I.P.C is not attracted against the petitioners. The explanation contained under Clause (a) and (b) of Section 498A I.P.C are also not available in the materials produced after investigation by the police, in C.C.No.494/2004 (Crime No.182/2004 of Vadakkencherry Police Station).

17. In the above facts situation, I quash Annexure-I, F.I.R, in Crime No.182/2004 and all further proceedings consequent thereon, pending on the file of Judicial Magistrate of the First Class, Alathur, as C.C.No.494/2004.

The Criminal Misc.Case is allowed as above.

(J.M.JAMES)
Judge

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